IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 1117 OF 2004

Shri Bhiva Kesu Kharade & ors. ... Appellants

V/s

Shri Ramchandra Aba Kharade
(since deceased) through his legal
heirs Shri Kisan Ramchandra Kharade
& ors. ... Respondents

Shri Dilip Bodake for the appellants.

Shri V.A. shastry for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 2ND DEC., 2004.

P.C.:

1. The appellant defendant has filed this appeal against the judgment and order passed by the Ad-hoc Addl. District Judge, Satara dated 19th October, 2002 dismissing the appeal passed by the Civil Judge, Jr. Divn., Vaduj, District Satara, dated 31.11.1992 decreeing the suit for perpetual injunction simplicitor.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs filed the suit against the defendants for perpetual injunction on the ground that they were obstructing their possession in the suit property i.e. Gat Nos. 220/1 and 220/2, located at Village Sundarpur, Tal. Khatav, Dist. Satara.

The learned Trial Judge adjudicated the dispute on merits holding that the plaintiffs had proved their title and lawful possession over the suit property and had also proved that the impugned land was given to the joint family of plaintiffs 1 and 2 and father of defendants' i.e. Kesu Kharade by registered Miras-patra. However, it was held that defendants failed to establish that there was partition in between the defendants' father and plaintiffs 1 & 2 prior to 2.12.1941 and, as such, plaintiffs' lawful possession was upheld and suit for perpetual injunction was decreed.

The appeal carried to the District Court, Satara was adjudicated on merits and the District Judge, Satara dismissed the appeal after hearing both parties. Hence the present appeal.

4. At the outset, it may be noted that both the Courts below are seen to have appreciated the factual aspects of the evidence in just and proper manner. The learned counsel for the appellants sought to raise the so-called question of law regarding jurisdiction of the Civil Court to entertain the suit in view of provisions of Sec.85 of the Bombay Tenancy & Agricultural Land Act. It was further sought to urge that, the Civil Court has no jurisdiction to hold that the revenue authorities had issued certificate under Sec. 32M of the B.T. & A.L. Act without following mandatory provisions and, therefore, the certifcate was bad in law.

In this regard, it must be noted that defence of the defendants is based upon Miras-patra (the document of title showing tenancy rights) which was issued in favour of defendants' father. On the basis of this document, as can be seen from the record, defendants had obtained certificate under Sec. 32-M of the B.T. & A.L. Act showing that the defendants are in possession of the suit property and, therefore, it was submitted on behalf of the appellant that once Certificate under Sec.32-M of the Act was issued, it was conclusive evidence to show the lawful possession of the defendants and, therefore, suit for perpetual injunction could not be maintained

against them. However, in this regard, it must be noted that, after issuance of certificate under Sec.32-M of the said Act, due proceeding under the competent authority under the B. T. & A. L. Act were taken and consequently the said certificate was cancelled and this aspect of cancellation attained finality by the judgment of this Court in Writ Petition No. 4251 of 2001 which came to be dismissed, which was filed by the defendants. Therefore it cannot lie in the mouth of the appellants-defendants that their right to waive the suit property is based on cancelled certificate under Sec. 32-M of the said Act. If this is the position, there is no question of bar of jurisdiction of Civil Court as contemplated under Sec.85 of the said Act because the issues involved in dispute regarding tenancy are resisted after Writ Petition No. 4251 of 2001 was decided against them. Therefore, there is no doubt whatsoever that there is no bar under Sec. 85 of the B.T. & A.L. Act.

Once this position is attained, there is absolutely no substantial question of law involved in this case. As laid down by the Supreme Court in the case of **Kondiba Dagdu Kadam v/s Savitribai Sopan Gujar & ors., reported in AIR 1999 SC 2213,** the concurrent findings of facts

whatsoever erroneous cannot be disturbed by the High Court in exercise of powers under Sec.100 of the C.P.C. Moreover, in the present case before us, the findings of facts based on document on record are seen to be recorded in just and proper manner and, therefore, would brook no interference by this Court.

In the result, the appeal stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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